

Opposition Due: May 2, 2014
Hearing Date: TBD

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11
LEHMAN BROTHERS HOLDINGS INC. *et al.*, : Case No. 08-13555 (SCC)
Debtors. : Jointly Administered
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**THE CANARY WHARF CLAIMANTS' STATEMENT OF UNDISPUTED
MATERIAL FACTS PURSUANT TO LOCAL BANKRUPTCY RULE 7056-1**

Pursuant to Local Bankruptcy Rule 7056-1(b), Claimants Canary Wharf Management Ltd., Heron Quays (HQ2) T1 Limited and Heron Quays (HQ2) T2 Limited (“Canary Wharf”) submit the following statement of material facts as to which there are no genuine issues to be tried in connection with Canary Wharf’s motion for summary judgment on liability.

1. A lease for the property at 25 Bank Street in London, England, dated March 16, 2005 (the “Lease”) was executed by Lehman Brothers Holdings Inc. (“Lehman”), a wholly-owned subsidiary of Lehman called Lehman Brothers Limited (“Lehman Sub”), Canary Wharf, and Canary Wharf Holdings Limited. (Stipulation of Undisputed Facts, executed June 13, 2013 (“Facts Stipulation”) (Ex. 1) ¶ 1; Lease (Ex. 9).)¹ A true and correct copy of the Lease is attached as Exhibit 9 to the accompanying De Leeuw Declaration. The Facts Stipulation is attached hereto as Appendix A.

¹ References herein to “Ex. ____” are to exhibits attached to the Declaration of Marc De Leeuw, executed March 14, 2014 (“De Leeuw Declaration”), being filed herewith. In the Facts Stipulation, Canary Wharf and Lehman “stipulate[d] and agree[d]” that the facts stated therein “are uncontested for purposes of” Canary Wharf’s claims. (Facts Stipulation (Ex. 1) at 1.)

2. In the Lease, Lehman Sub is defined as the “Tenant,” Lehman is defined as the “Surety,” Canary Wharf is defined as the “Landlord” and “Management Company,” and Canary Wharf Holdings Limited is defined as “Landlord’s Guarantor.” (Ex. 9 at LBHI_CW-9 (Lease Particulars ¶ 3).)

3. The Lease is for a term of 30 years commencing July 3, 2003. (Facts Stipulation (Ex. 1) ¶ 3; *see also* Lease (Ex. 9) at LBHI_CW-10 (Lease Particulars ¶ 6).)

4. The Lease states (§ 8.16) that it is governed by the laws of England. (Facts Stipulation (Ex. 1) ¶ 2; *see also* Lease (Ex. 9) at LBHI_CW-67 (§ 8.16).)

5. Paragraph 1 of Schedule 4 to the Lease, entitled “Indemnity by Surety,” provides as follows:

1. Indemnity by Surety

The Surety hereby covenants with the Landlord and as a separate covenant with the Management Company as a primary obligation that the Tenant or the Surety shall at all times until the Tenant shall cease to be bound by the Tenant’s covenants in the Lease during the Term duly perform and observe all the covenants on the part of the Tenant contained in this Lease including the payment of the rents hereby reserved and all other sums payable under this Lease in the manner and at the times herein specified and the Surety shall indemnify and keep indemnified the Landlord and the Management Company against all claims demands losses damages liability costs fees and expenses whatsoever sustained by the Landlord or the Management Company by reason of or arising directly or indirectly out of any default by the Tenant in the performance and observance of any of its obligations or the payment of any rents and other sums Provided That the Landlord and the Management Company shall notify the Tenant of any such actions or other matters and take all reasonable steps to mitigate such losses having regard to the nature of the breach

(Lease (Ex. 9) at LBHI_CW-101 (Schedule 4 ¶ 1)).

6. On September 15, 2008, Lehman filed for bankruptcy in the U.S. Bankruptcy Court for the Southern District of New York under chapter 11 of the U.S. Bankruptcy Code, and on that same day, Lehman Sub was placed into administration in the United Kingdom. (Facts Stipulation (Ex. 1) ¶ 4.)

7. On September 17, 2009, Canary Wharf filed Proofs of Claim Numbers 14824 and 14826 against Lehman in this proceeding. (Facts Stipulation (Ex. 1) ¶ 5.)

8. In March 2010, Lehman Sub vacated the 25 Bank Street building and stopped paying rent or any of the other amounts due under the Lease. (Joint Administrators' Progress Report, dated April 13, 2010 (Ex. 13) at 1, 4, 14; Transcript of Deposition of Sir George Iacobescu, Canary Wharf's Chairman and CEO, taken June 18, 2013 ("Iacobescu Tr.") (Ex. 5) 49:20-50:2, 246:5-12; Transcript of Deposition of Pamela Kendall, Canary Wharf Counsel, taken June 20, 2013 (Ex. 14) 99:21-100:8.)

9. Lehman Sub, its administrators, and Canary Wharf entered into an agreement, dated December 3, 2010, pursuant to which Canary Wharf would forfeit the Lease. (Facts Stipulation (Ex. 1) ¶ 6; *see also* Forfeiture Letter (Ex. 16).)

10. On December 10, 2010, Canary Wharf forfeited the Lease and took possession of the 25 Bank Street property. (Iacobescu Tr. (Ex. 5) 37:7-11; Lehman's Reply to Canary Wharf's Response and in Further Support of Objection to Proofs of Claim Number 14824 and 14826, filed Jan. 10, 2013 (ECF# 33774) ¶ 6.)

11. A 999-year lease for the property at 25 Bank Street in London, England, dated December 20, 2010, was executed among HQCB Investments Limited as "Landlord," JPMorgan Chase Bank, N.A. as "Tenant," Heron Quays Properties Limited as "Estate Landlord," Canary Wharf Management Company Limited as "Management Company," Canary Wharf Investments Limited as "Estate Freeholder," and Canary Wharf Limited as "Canary Wharf Landlord." (JPMorgan Lease, dated Dec. 20, 2010 (Ex. 19) Prescribed Clauses LR1, LR3, LR6.)

Dated: New York, New York
March 14, 2014

/s/ David B. Tulchin

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Appendix A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re : Chapter 11
LEHMAN BROTHERS HOLDINGS INC., *et al.* : Case No. 08-13555 (JMP)
Debtors. : Jointly Administered

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**STIPULATION OF UNDISPUTED FACTS FOR HEARING ON
LIABILITY ISSUES (PROOFS OF CLAIM NUMBERS 14824 AND 14826)**

Debtor Lehman Brothers Holdings Inc. (“LBHI”) and Claimants Canary Wharf Management Ltd., Heron Quays (HQ2) T1 Limited, and Heron Quays (HQ2) T2 Limited (collectively, “Canary Wharf”), hereby stipulate and agree that the following facts are uncontested for purposes of Proofs of Claim Numbers 14824 and 14826 and LBHI’s Objection thereto:

1. A lease for the property at 25 Bank Street in London, England, dated March 16, 2005 (the “Lease”) was executed by LBHI, Lehman Brothers Limited (“LBL”), a subsidiary of LBHI, Canary Wharf, and Canary Wharf Holdings Limited. A copy of the Lease is attached hereto as Exhibit A, and as Exhibit 6 to the Declaration of Marc De Leeuw, executed on October 12, 2012 (“De Leeuw Declaration”), accompanying Canary Wharf’s October 12, 2012 Response to LBHI’s Objection to Proofs of Claim Numbers 14824 and 14826 (ECF# 31342-7).

2. The Lease states (§ 8.16) that it is governed by the laws of England.
3. The Lease is for a term of 30 years commencing July 3, 2003.
4. On September 15, 2008, LBHI filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York, and LBL was placed into administration in the United Kingdom.

5. On September 17, 2009, Canary Wharf filed Proofs of Claim Numbers 14824 and 14826 against LBHI in this proceeding.

6. LBL, its administrators, and Canary Wharf entered into an agreement, dated December 3, 2010, pursuant to which Canary Wharf would forfeit the Lease (the "LBL Forfeiture Agreement"). The LBL Forfeiture Agreement is attached hereto as Exhibit B, and as Exhibit B to LBHI's Objection to Proofs of Claim Number 14824 and 14826 in this action (ECF# 30055).

Dated: June 13, 2013
New York, New York

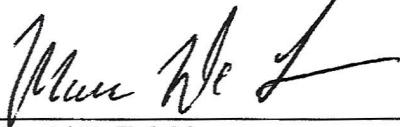
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